

From: Brad Matter
To: Microsoft ATR
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Subject: Microsoft Settlement

To whom it may concern -

I strongly oppose the proposed terms of settlement in the case of United States of America vs. Microsoft, and State of New York ex. rel. vs. Microsoft.

The terms of the settlement are far too weak and do far too little to prevent Microsoft from continuing in its pattern of unlawful conduct, and do nothing, so far as I can tell, to remedy the effects of its past unlawful conduct.

The terms of the settlement are written with such a degree of specificity that they effectively amount to closing the gate after the cows are out of the corral. For example, releasing APIs is discussed, but there is no mention of file formats - leaving a gaping loophole through which Microsoft can drive its monopolistic efforts.

Another gaping loophole is in section III.H.2, which mentions "Top-Level Windows" - which are defined as being able to hold sub-windows. All Microsoft need do is create a window that can't hold a sub-window, or create some "innovative" new windowless technology, and section III.H.2 no longer applies.

In fact, since the settlement fails to address Microsoft's future behavior in any meaningful way, it's entirely possible that Microsoft may just have some such thing in store via its .NET initiative. Given Microsoft's past behavior, I have no doubt that future Microsoft "innovations" will be specifically tailored toward evading the terms of the settlement and that it will continue to illegally maintain and extend its monopoly.

The exclusion of all devices except for very narrowly defined "personal computers" is similarly disquieting.

Microsoft's conduct over the years has flouted both ethics and the law. It gained its monopoly in part through a scheme called "per-processor licensing", in which computer manufacturers paid Microsoft for every computer they sold, whether it had a Microsoft operating system or not. Microsoft thus effectively taxed the computer industry, and made money even when someone else's products was sold.

Ironically, it is harder today to buy a computer with a non-Microsoft OS than it was when Microsoft stopped the practice as part of a consent decree (part of which, if I recall, Microsoft later broke). Lately, I've

been shopping for a computer for a work-related project which requires Windows XP Professional. None of the inexpensive computers in my price range come with Windows XP Professional, but all come with some flavor of Microsoft operating system. It seems absurd that I can't buy a computer without an OS and add the OS of my choice to it. In this case, Microsoft gets paid twice; once for a product which I can't use. I see nothing in the settlement which addresses this problem.

I've heard some (weak) arguments that Microsoft must be interfered with as little as possible because of its alleged importance, to the national economy, national security, or both. It seems ridiculous to me. An economy in which robust competition flourishes is more important than one in which Microsoft flourishes at the expense of the innovation and efficiency which are driven by that competition.

The enormous number of "internet" worms and viruses that make the news on such a regular basis are Microsoft worms, written to exploit the weaknesses in Microsoft's software. If Microsoft had to compete on the basis of security, those weaknesses wouldn't exist. Instead, Microsoft spends its money on activities to expand its market share, whether those activities are legal or not.

I do not see how these actions (and inactions) of Microsoft contribute to national security or the economy in any positive sense.

Acceptance of the settlement as it currently stands will simply allow Microsoft to continue to illegally maintain and extend its monopoly by working around its weak provisions. Worse, acceptance of the settlement will effectively protect Microsoft while it does so, since the government is unlikely to take any action against Microsoft for the duration of the 5-year period or for some years afterward.

I urge that the settlement be rejected, and that any future settlement or judgement against the company not merely bar it from practices it no longer needs (Netscape's no longer a threat; after the per-processor licensing practice was banned as part of the earlier consent decree, a Microsoft executive said that it "had achieved its purpose" and was no longer necessary). Any future action must at a minimum truly remedy the harm caused by its past unlawful conduct, and effectively prevent it from engaging in illegal behavior in the future.

Ideally, any such judgement or settlement would include penalties stiff enough to ensure that the executives at Microsoft would get the message any such future behavior would not be tolerated. This is a company whose paid "grass-roots" efforts have included letters from dead people! They don't understand ethics, but they do understand power.

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